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9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**

11 JOHN HO, an individual

12 Plaintiff,

13 vs.

14 LSJ INVESTMENTS INC., a California
15 corporation

16 Defendants.

Case No.: 2:22-cv-08114

COMPLAINT FOR

**(1) VIOLATION OF THE UNRUH
CIVIL RIGHTS ACT
(CALIFORNIA CIVIL CODE
§§ 51, 52);**

**(2) VIOLATIONS OF THE
AMERICANS WITH
DISABILITIES ACT OF 1990**

I.
SUMMARY

1. This is a civil rights action by plaintiff John Ho (“Plaintiff”) for discrimination at the building, structure, facility, complex, property, land, development, and/or surrounding business complex located 13032 Valley Blvd, La Puente, CA 91746-1858, Los Angeles County, where the business “Taco Nazo” operates (the “Property”). Plaintiff frequents the area for dining, shopping and entertainment as he lives approximately 20 minutes from the Property and enjoys the restaurant at the Property. In this particular instance, Plaintiff desired to patronize the “Taco Nazo” restaurant located on the property.

2. Plaintiff seeks damages, injunctive and declaratory relief, attorney’s fees and costs pursuant to the Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12101, et seq.) and related California statutes¹ against the owner of the property LSJ INVESTMENTS INC., a California corporation (“Defendant”).

II.
JURISDICTION

3. This Court has original jurisdiction under 28 U.S.C. §§ 1331 and 1343 for ADA claims.

4. Supplemental jurisdiction for claims brought under parallel California law – arising from the same nucleus of operative facts – is predicated on 28 U.S.C § 1367.

5. Plaintiff’s claims are authorized by 28 U.S.C. §§ 2201 and 2202.

III.
VENUE

6. All actions complained of herein take place within the jurisdiction of the United States District Court, Central District of California, and venue is invoked

¹ Plaintiff is not currently asserting a cause of action under California Civil Code § 55, but may amend his complaint at a later time upon discovery of facts which give rise to such a claim.

1 pursuant to 28 U.S.C. § 1391(b), (c)

2 **IV.**

3 **PARTIES**

4 **7.** On information and belief, Plaintiff alleges that Defendant is or was at
5 the time of the incident, the owner, operator, lessor and/or lessee of the Property, and
6 consist of a person (or persons), firm, company, and/or corporation.

7 **8.** Plaintiff is a T-12 paraplegic, and as a result is unable to walk or stand,
8 and thus requires a use of a wheelchair at all times when traveling in public. Plaintiff
9 is “physically disabled” as defined by all applicable California and United States laws,
10 and a member of the public whose rights are protected by these laws. Plaintiff is a
11 resident of Los Angeles County, California. Plaintiff is considered a high frequency
12 litigant as that term is defined in California Code of Civil Procedure § 425.55(b). In
13 the twelve months preceding the filing of this complaint, Plaintiff filed seventeen (17)
14 other construction accessibility related claims (not including this one).

15 **V.**

16 **FACTS**

17 **9.** On March 5, 2022, Plaintiff patronized the Property. The Property is a
18 sales or retail establishment, open to the public, which is intended for nonresidential
19 use and whose operation affects commerce.

20 **10.** Plaintiff visited the Property and encountered barriers (both physical and
21 intangible) that interfered with – if not outright denied – Plaintiff’s ability to use and
22 enjoy the goods, services, privileges and accommodations offered at the facility. To
23 the extent known by Plaintiff, the barriers at the Property included, but are not limited
24 to the following:

- 25
- 26 a. There are no accessible parking spaces for use by persons with
27 disabilities. Specifically, parking spaces marked as accessible have been
28 coned off and turned into a route for the drive through at the restaurant.

1 Without an accessible parking space that is accompanied by an access
2 aisle, Plaintiff cannot safely and comfortably exit out of his car.

3 **11.** These barriers to access are listed without prejudice to Plaintiff citing
4 additional barriers to access after inspection by Plaintiff's access consultant, per the
5 9th Circuits standing standards under *Doran v. 7-Eleven, Inc.* 524 F.3d 1034 (9th Cir.
6 2008). These barriers prevented Plaintiff from enjoying full and equal access to the
7 Property.

8 **12.** Plaintiff thus experienced difficulty and discomfort as a result of the
9 accessible barriers he encountered. Although he would like to return to the Property
10 to patronize the convenience store at the Property, he continues to be deterred from
11 visiting the Property because of the future threats of injury created by these barriers.
12 Plaintiff often frequents the area as he lives close to the Property and enjoys the
13 various stores and restaurants surrounding the Property. Plaintiff would return to the
14 Property once the barriers have been corrected not only to patronize the restaurant at
15 the Property, but also to ensure that the barriers have been corrected.

16 **13.** On information and belief, Plaintiff alleges that Defendant knew that
17 these elements and areas of the Property were inaccessible, violate state and federal
18 law, and interfere with (or deny) access to the physically disabled. Moreover,
19 Defendant has the financial resources to remove these barriers from the Property
20 (without much difficult or expense), and make the Property accessible to the
21 physically disabled. To date, however, the Defendant refuses to remove those
22 barriers.

23 **14.** On information and belief, Plaintiff alleges that at all relevant times,
24 Defendant has possessed and enjoyed sufficient control and authority to modify the
25 Property to remove impediments to wheelchair access and to comply with the
26 Americans with Disabilities Act Accessibility Guidelines and Title 24 regulations.
27 Defendant has not removed such impediments and have not modified the Property to
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1 conform to accessibility standards.

2 **VI. FIRST CAUSE OF ACTION: VIOLATION OF CALIFORNIA LAW**
3 **INCLUDING: THE UNRUH ACT, CIVIL CODE §§ 51, 52 AND THE**
4 **AMERICANS WITH DISABILITIES ACT AS INCORPORATED BY CIVIL**
5 **CODE SECTION 51(f)**

6 15. Plaintiff incorporates the allegations contained in paragraphs 1 through
7 14 for this claim and incorporates them herein.

8 16. At all times relevant to this complaint, California Civil Code § 51 has
9 provided that physically disabled persons are free and equal citizens of the state,
10 regardless of disability or medical condition:

11 All persons within the jurisdiction of this state are free and equal, and
12 no matter what their sex, race, color, religion, ancestry, national
13 origin, disability, or medical condition are entitled to the full and
14 equal accommodations, advantages, facilities, privileges, or services
15 in all business establishments of every kind whatsoever. Cal. Civ.
16 Code § 51(b).

17 17. California Civil Code § 52 provides that the discrimination against
18 Plaintiff on the basis of his disabilities constitutes a violation of the anti-
19 discrimination provisions of §§ 51 and 52.

20 18. Defendant's discrimination constitutes a separate and distinct violation of
21 California Civil Code § 52 which provides that:

22 Whoever denies, aids or incites a denial, or makes any discrimination
23 or distinction contrary to section 51, 51.5 or 51.6 is liable for each and
24 every offense for the actual damages, and any amount that may be
25 determined by a jury, or a court sitting without a jury, up to a
26 maximum of three times the amount of actual damage but in no case
27 less than four thousand dollars (\$4,000) and any attorney's fees that
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1 may be determined by the court in addition thereto, suffered by any
2 person denied the rights provided in Section 51, 51.5 or 51.6.

3 19. Plaintiff continues to be deterred from visiting the Subject Property based
4 upon the existence of the accessible barriers. In addition to the instance of
5 discrimination occurring in March 5, 2022, Plaintiff is entitled to \$4,000.00 in
6 statutory damages for each additional occurrence of discrimination under California
7 Civil Code § 52.

8 20. Any violation of the Americans with Disabilities Act of 1990 (as pled in
9 the Third Cause of Action) constitutes a violation of California Civil Code § 51(f)
10 thus independently justifying an award of damages and injunctive relief pursuant to
11 California law. Per § 51(f), “[a] violation of the right of any individual under the
12 Americans with Disabilities Act of 1990 ... shall also constitute a violation of this
13 section.”

14 21. The actions and omissions of Defendant as herein alleged constitute a
15 denial of access to and use of the described public facilities by physically disabled
16 persons within the meaning of California Civil Code §§ 51 and 52. As a proximate
17 result of Defendant’s action and omissions Defendant has discriminated against
18 Plaintiff in a violation of Civil Code §§ 51 and 51.

19 VII.

20 **SECOND CAUSE OF ACTION: VIOLATION OF THE AMERICANS WITH** 21 **DISABILITIES ACT OF 1990 (42 USC §§ 12101 *et seq.*)**

22 22. Plaintiff incorporates the allegations contained in paragraphs 1 through
23 21 for this claim and incorporates them herein.

24 23. As part of the Americans with Disabilities Act of 1990 (“ADA”),
25 Congress passed “Title III – Public Accommodations and Services Operated by
26 Private Entities.” 42 U.S.C. § 12181 *et seq.* The Property is one of the “private
27 entities” which are considered “public accommodations” for purposes of this title,
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1 which includes any “restaurant, bar, or other sales or rental establishment serving food
2 or drink.” § 301(7)(B).

3 24. The ADA states that “[n]o individual shall be discriminated against on
4 the basis of disability in the full and equal enjoyment of the goods, services, facilities,
5 privileges, advantages, or accommodations of any place of public accommodation by
6 any person who owns, leases, or leases to, or operates a place of public
7 accommodation.” 42 U.S.C. § 12182.

8 25. The acts and omissions of Defendant set forth herein were in violation of
9 Plaintiff's rights under the ADA and the regulations promulgated thereunder, 28 CFR
10 Part 36 *et seq.*

11 26. On information and belief, Plaintiff alleges that the Property was
12 constructed or altered after January 26, 1993 thus triggering requirements for removal
13 of barriers to access for disabled persons under § 303 of the ADA. Further on
14 information and belief, Plaintiff alleges that removal of each of the barriers
15 complained of by Plaintiff as hereinabove alleged, were at all times herein mentioned
16 "readily achievable" under the standards §§ 301 and 302 of the ADA. As noted
17 hereinabove, removal of each and every one of the architectural barriers complained
18 of herein were also required under California law. In the event that removal of any
19 barrier is found to be "not readily achievable," Defendant still violated the ADA, per §
20 302(b)(2)(A)(v) by failing to provide all goods, services, privileges, advantages and
21 accommodations through alternative methods that were readily achievable.

22 27. On information and belief, as of the date of Plaintiff's encounter at the
23 Property and as of the filing of this Complaint, the Defendant denies and continues to
24 deny full and equal access to Plaintiff and to other disabled persons, including
25 wheelchair users, in other respects, which violate plaintiff's rights to full and equal
26 access and which discriminate against Plaintiff on the basis of his disability, thus
27 wrongfully denying to plaintiff the full and equal enjoyment of the goods, services,
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1 facilities, privileges, advantages and accommodations, in violation of §§ 302 and 303
2 of the ADA. 42 USC §§ 12182 and 12183.

3 28. On information and belief, Defendant has continued to violate the law
4 and deny the rights of Plaintiff and other disabled persons to access this public
5 accommodation since on or before Plaintiff's encounters, as previously noted.
6 Pursuant to the ADA, § 308, 42 USC 12188 *et seq.*, Plaintiff is entitled to the
7 remedies and procedures set forth in § 204(a) of the Civil Rights Act of 1964, 42 USC
8 2000(a)-3(a), as Plaintiff is being subjected to discrimination on the basis of disability
9 in violation of the ADA or has reasonable grounds for believing that he is about to be
10 subjected to discrimination. Pursuant to § 308(a)(2), "In cases of violations of § 302(b)
11)(2)(A)(iv) and § 303(a) ... injunctive relief shall include an order to alter facilities to
12 make such facilities readily accessible to and usable by individuals with disabilities to
13 the extent required by this title."

14 29. Plaintiff seeks relief pursuant to remedies set forth in § 204(a) of the Civil
15 Rights Act of 1964, 42 USC 2000(a)-3(a), and pursuant to Federal Regulations
16 adopted to implement the Americans with Disabilities Act of 1990. Plaintiff is a
17 qualified disabled person for purposes of § 308(a) of the ADA who is being subjected
18 to discrimination on the basis of disability in violation of Title III and who has
19 reasonable grounds for believing he will be subjected to such discrimination each time
20 that he may attempt to use the property and premises.

21 **PRAYER**

22 WHEREFORE, Plaintiff prays that this court award damages and provide relief
23 as follows:

24 1. Issue a preliminary and permanent injunction directing Defendant as current
25 owner, operator, lessor, and/or lessee of the property and premises to modify the
26 above described property and premises and related facilities so that each provides full
27 and equal access to all persons, including but not limited to persons with physical
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1 disabilities who use wheelchairs, and issue a preliminary and permanent injunction
2 directing Defendant to provide and maintain facilities usable by plaintiff and similarly
3 situated persons with disabilities, and which provide full and equal access, as required
4 by law, including appropriate changes in policy;

5 2. Retain jurisdiction over the Defendant until such time as the Court is satisfied
6 that Defendant unlawful policies, practices, acts and omissions, and maintenance of
7 inaccessible public facilities as complained of herein no longer occur, and cannot
8 recur;

9 3. Award to Plaintiff all appropriate damages, including but not limited to
10 statutory damages, general damages and treble damages in amounts within the
11 jurisdiction of this Court, all according to proof;

12 4. Award to Plaintiff all reasonable statutory attorney fees, litigation expenses, and
13 costs of this proceeding as provided by law;

14 5. Award to Plaintiff prejudgment interest pursuant to California Civil 17 Code§
15 329

16 6. Grant such other and further relief as this Court may deem just and proper.

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18 ASCENSION LAW GROUP, PC

19 DATE: November 7, 2022

20 /s/Pamela Tsao

21 Pamela Tsao, attorney for Plaintiff

22 JOHN HO
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